

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

JAMES EDWARD COOK, JR.,

Plaintiff,

v.

Civil Action No. 5:22-CV-234
Judge Bailey

B. KELLY LANHAM and AARON LINN,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge Mazzone [Doc. 23]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Mazzone for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Mazzone filed his R&R on November 4, 2022, wherein he recommends plaintiff's case be dismissed with prejudice for failure to state a claim and as frivolous. Further, Magistrate Judge Mazzone recommends that plaintiff's Motion Requesting a Lie Detector Test [Doc. 21] and Motion for Issuance of Subpoenas [Doc. 22] be denied as moot. For the reasons that follow, this Court will adopt the R&R.

II. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the

factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). Nor is this Court required to conduct a *de novo* review when the party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” **Orpiano v. Johnson**, 687 F.2d 44, 47 (4th Cir. 1982).

In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). *Pro se* filings must be liberally construed and held to a less stringent standard than those drafted by licensed attorneys, however, courts are not required to create objections where none exist. **Haines v. Kerner**, 404 U.S. 519, 520 (1972); **Gordon v. Leeke**, 574 F.2d 1147, 1151 (4th Cir. 1971).

Here, objections to Magistrate Judge Mazzone’s R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure. Plaintiff timely filed his objections [Doc. 27] on November 10, 2022.¹ Accordingly, this Court will review the portions of the R&R to which objection was filed under a *de novo* standard of review. The remainder of the R&R will be reviewed for clear error.

¹This Court construes plaintiff’s Motion Requesting Leave of Court re Issuance of Subpoenas [Doc 27] as his objections to the R&R.

III. DISCUSSION

A. Objections to R&R

Plaintiff objects to the R&R claiming that he never received the special instructions related to his release and that his parole was revoked due to not receiving those instructions. See [Doc. 27 at 3]. The Court is of the opinion that Magistrate Judge Mazzone's R&R accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action. Accordingly, having found no clear error in the remainder of the magistrate judge's well-reasoned review of the pleadings, plaintiff's objections [Doc. 27] are **OVERRULED**, and it is the opinion of this Court that the Report and Recommendation [Doc. 23] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that plaintiff's Complaint [Doc. 1] is **DENIED** and **DISMISSED WITH PREJUDICE**. Further, plaintiff's Motion Requesting Lie Detector Test [Doc. 21], Motion Requesting that Subpoenas be Issued [Doc. 25] are **DENIED AS MOOT**. Insofar as plaintiff's Motion is requesting leave of court to issue subpoenas, the Motion [Doc. 27] is **DENIED AS MOOT**.

The Clerk is hereby **DIRECTED** to **STRIKE** the above-styled case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* plaintiff.

DATED: November 13, 2022.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE